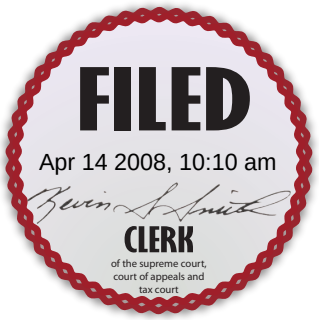

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IN THE
COURT OF APPEALS OF INDIANA

MICHAEL MEAD,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 34A05-0712-CR-716
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HOWARD SUPERIOR COURT
The Honorable Stephen M. Jessup, Judge
Cause No. 34D02-0409-FB-371

April 14, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Michael Mead appeals his twenty-year sentence for Class B felony possession of cocaine. We affirm.

Issue

Mead raises one issue, which we restate as whether the trial court abused its discretion when sentencing Mead.

Facts

On September 25, 2004, Officer Ty Solomon and Officer Brian Sheetz of the Kokomo Police Department were on patrol when they observed Lisa Clifton lying on the ground with Michael Mead standing over her next to the entrance of an apartment's parking lot. Both Mead and Clifton told the officers that Mead had struck Clifton with his vehicle when she attempted to run in front of his vehicle in order to prevent him from leaving. Clifton was transported to Howard Community Hospital for injuries to her leg and back.

Mead consented to a portable breath test which revealed a blood alcohol content of .137. Mead later failed several field sobriety tests and was eventually transported to Howard County Jail. While at jail, Mead failed to provide a valid breath test because he did not follow the officer's instructions. Mead also refused to provide a blood sample at the hospital per the officer's request. Officer Solomon next instructed Mead to remove his jewelry and personal articles for inventory. While emptying his left pocket, Mead dropped a small bag of a white substance that later tested positive for cocaine.

The State charged Mead with Class B felony attempted voluntary manslaughter, Class B felony aggravated battery, Class B felony possession of cocaine, Class D felony causing serious bodily injury when operating a motor vehicle with a blood alcohol content of .08 or more, and Class D felony criminal recklessness resulting in serious bodily injury. Because Clifton passed away on December 18, 2004 as the result of an infection caused by injuries resulting from the accident, Mead was further charged with Class B felony voluntary manslaughter and Class C felony causing death when operating a motor vehicle while intoxicated.

The State and Mead reached a plea agreement on April 24, 2007, that resulted in Mead pleading guilty to Class B felony possession of cocaine and the State dismissing the remaining counts. Mead was sentenced on September 6, 2007. At the conclusion of the sentencing, the trial court made the following statement:

> Thank you, Let me address that last verse. There seems to be a question as to exactly what is meant by an accident. Most of it has been centered here during this hearing as to whether something can be classified as an accident when the perpetrator intentionally put themself [sic] in a state of mind that caused the accident. That's one interpretation. There's another one here that we'll never know I guess, and that is whether he intended to hit her with the car. He claims he didn't. There's a witness who claims he did. There is some – the facts we'll never know, and I think that Mrs. Williams stated something that I hadn't thought of, but I think of now and that is that you'll never have to plead guilty or not guilty to killing her, nor will you ever have to explain to anybody in detail what exactly happened with regard to those charges. I go back and review this criminal record, Mr. Mead, and it is as serious as the State has indicated, and I'm very grateful for Mr. – Pastor Gifford's work with you over the last few months, and also for the courses that you have taken and your work with Pastor Green. And I don't look upon that as you

> doing that to gain favor with the Court to get a certain treatment today. I sincerely hope and have no reason to doubt that you have changed, but that really doesn't have a whole lot to do with sentencing when I look at your past record, and I also consider all of the things that were dismissed in this case as the quid pro quo for your pleading guilty to one count, Aggravated Batter, a B felony; O.W.I. resulting in Serious Bodily Injury; Criminal Recklessness Resulting in Bodily Injury; Causing Death While Operating a Vehicle While Intoxicated, all of these things. Now granted they were all part of one incident and you wouldn't have faced charges on each of those, but you could have faced charges on two or three of them since they were crimes of violence. But be that as it may, there's no doubt about the cocaine and you're not – and I – understand your expression when you wish you hadn't taken it and I'm hopeful it will never happen again. Having said all that, I have very little choice, I see nothing to mitigate this case, and I do sentence you to 20 years in prison.

Tr. pp. 44-45. The court's written sentencing order did not cite any further reason explaining Mead's sentence. Mead now appeals.

Analysis

Mead argues the trial court erred when sentencing him because it failed to consider any mitigating factors and failed to explain its reasoning in the written sentencing order. We engage in a four-step process when evaluating a sentence under the current "advisory" sentencing scheme. Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007). First, the trial court must issue a sentencing statement that includes "reasonably detailed reasons or circumstances for imposing a particular sentence." Id. Second, the reasons or omission of reasons given for choosing a sentence are reviewable on appeal for an abuse of discretion. Id. Third, the weight given to those reasons, i.e. to particular aggravators or mitigators, is not subject to appellate review. Id. Fourth, the merits of a

particular sentence are reviewable on appeal for appropriateness under Indiana Appellate Rule 7(B). Id. Even if a trial court abuses its discretion by not issuing a reasonably detailed sentencing statement or in its findings or non-findings of aggravators and mitigators, we may choose to review the appropriateness of a sentence under Rule 7(B) instead of remanding to the trial court. See Windhorst v. State, 868 N.E.2d 504, 507 (Ind. 2007).

Mead's first argument seems to be that the trial court failed to issue an adequate sentencing statement. In this case, the trial court issued an oral and written sentencing statement. The written statement was brief and did not include any reasoning explaining Mead's sentence. However, this alone does not amount to reversible error because we consider both the oral and written statements together. See McElroy v. State, 865 N.E.2d 584, 589 (Ind. 2007) (holding the reviewing court is to examine the written statement alongside the oral statement to discern the findings of the trial court.) We conclude the trial court's oral statement is adequate because it discussed aggravators and mitigators and imposed the same sentence as the written statement. See id. at 590-91.

Mead also seems to contend the trial court abused its discretion in its finding or non-finding of aggravators and mitigators. An abuse of discretion in identifying or not identifying aggravators and mitigators occurs if it is "'clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.'" Anglemyer, 868 N.E.2d at 490 (quoting K.S. v. State, 849 N.E.2d 538, 544 (Ind. 2006)). Additionally, an abuse of discretion occurs if the record does not support the reasons given for imposing sentence, or the sentencing

statement omits reasons that are clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law. Id. at 490-91.

During the oral sentencing statement, the trial court found Mead's lengthy criminal history to be an aggravating factor. The trial court also considered three possible mitigating factors: 1) Mead had completed several prison ministry programs; 2) Mead had expressed remorse for his previous cocaine use; and 3) Mead had pled guilty.

Mead argues the trial court improperly assigned little, if any, weight to Mead's remorse or guilty plea. Addressing Mead's argument essentially asks us to reweigh the trial court's reasoning of individual mitigators. Trial courts are not required to find mitigating circumstances or explain why it has not accepted mitigators. Sargent v. State, 875 N.E.2d 762, 770 (Ind. Ct. App. 2007). Mead believes the sentencing statement failed to acknowledge or even consider Mead's remorse for his actions. "Remorse, or lack thereof, by a defendant is often something that is better gauged by a trial judge who views and hears a defendant's apology and demeanor first hand and determines the defendant's credibility." Gibson v. State, 856 N.E.2d 142, 148 (Ind. Ct. App. 2006). We are not in a position to find that the trial court abused its discretion by not assigning weight to Mead's alleged remorse.

We also believe the trial court did not err when evaluating Mead's guilty plea. Pleading guilty does not automatically entitle the defendant to a reduced sentence because courts are still entitled to assess its mitigating effects. Payne v. State, 838 N.E.2d 503, 508 (Ind. Ct. App. 2005), trans. denied. When assigning weight to a defendant's guilty plea, trial courts should assess whether the defendant received a

substantial benefit from this plea. See id. at 509. It was reasonable for the trial court to believe that the plea agreement substantially benefited Mead given the violent scope of the incident and the substantial number of felonies and potential jail time facing him. The trial court was justified when it attached no weight to Mead's guilty plea. Even though the trial court did not assign weight to any mitigating factors, the trial court reasonably addressed potential aggravators and mitigators and properly sentenced Mead.[1]

Conclusion

The trial court did not abuse its discretion when sentencing Mead to twenty years in prison. We affirm.

Affirmed.

SHARPNACK, J., and VAIDIK, J., concur.

[1] Although Mead mentions Rule 7(B), he fails to develop a separate argument that his sentence is inappropriate.